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ASSEMBLY—No. 5.

STATE OF NEW JERSEY.

AN ACT TO INCORPORATE THE WEST-JERSEY RAILROAD COMPANY.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey,* That Thos. H. Whitney, Lewis Mulford, John W. Mickle, George M. Ward, Samuel S. Marcy, David Potter, E. L. B. Wales, Richard P. Thompson, Charles E. Elmer, Richard C. Holmes, Newcomb J. Thompson, Francis N. Buck, Benjamin F. Lee, Samuel J. Reeves, Abraham Browning, John A. Elkinton, Joshua Swain, Jr., Richard D. Wood, Benjamin Acton, Jr., Thomas Mills, Thomas Jones Yorke, Samuel A. Whitney, Mark Devine, Daniel E. Estell, and such other persons as may be hereafter associated with them, be, and are hereby ordained, constituted and declared to be a body politic and corporate, in fact and in name, by the name of the “West-Jersey Railroad Company,” and shall be capable of purchasing, holding, and conveying, any lands, tenements, goods and chattels whatsoever, necessary or expedient for the object of this incorporation.

2. *And be it enacted,* That the amount of the capital stock of said company shall be one million dollars, with liberty to increase the same to two millions, and shall be divided into shares of fifty dollars each, which shall be deemed personal property, and transferable in such manner as the said corporation shall by their by-laws direct.

3. *And be it enacted,* That the above named persons, or a majority of them, shall be commissioners to open books, to receive

subscriptions to the capital stock of said corporation, at such time or times, and place and places, as they or a majority of them may think proper, giving at least twenty days notice of the same in two of the newspapers published in this state, and that at the time of subscribing, ten per centum shall be paid for each share subscribed for, to the commissioners, or some one of them, and as soon as two hundred and fifty thousand dollars of the capital stock shall be subscribed, such commissioners shall give like notice for a meeting of the stockholders, to choose thirteen directors, a majority of whom shall be residents of this state; and such election shall be made at the time and place appointed, by such of the stockholders as shall attend for that purpose, either in person or by proxy, each share of the capital stock entitling the holder thereof to one vote; and the said above named persons, or any three of them, shall be inspectors of the first election of directors of the said corporation, and shall certify, under their hands, the names of those persons duly elected, and deliver over the subscriptions, books and money paid in, deducting all expenses previously incurred, to the said directors, and the time and place of holding the first meeting of said directors shall be fixed by the said persons named in the first section of this act, or a majority of them, and the directors chosen at such meeting, or at the annual election of the corporation, shall, as soon as may be, after every election, choose out of their own number, a president who shall be a resident of this state; and in case of the death, resignation, or removal of the president, or any director, such vacancy or vacancies may be filled for the remainder of the year in which they may happen, by the said board of directors, or a majority of them; and in case of the absence of the president, the said board of directors, or a majority of them, may appoint a president pro tempore, who shall have such power and functions as the by-laws of the said corporation shall provide.

4. *And be it enacted*, That in case it shall happen that an election of directors should not be made during the day when pursuant to this act it ought to be made, the said corporation shall not for that cause be deemed to be dissolved, but such election may be held at any other time, in the manner provided by law in such cases, and the directors for the time being shall continue to hold their office until others shall have been chosen in their places.

5. *And be it enacted*, That seven directors of the said corporation shall be competent to transact all business of said corporation and shall have power to call in the capital stock of said company by such instalments, and at such times as they may direct, and in case of the non-payment of said instalments, or any one of them, to forfeit the share or shares upon which such default shall arise, and to make and prescribe such by-laws, rules and regulations, as to them shall appear needful and proper, touching the management and regulation of the stock, property, estate and effects of the said corporation, and also shall have power to appoint such officers, clerks and servants, as to them shall seem meet, and to establish and fix such salaries to them, and also to the president, as to the said board shall appear proper.

6. *And be it enacted*, That the president and directors of the said company be, and are hereby authorized and invested with all the rights and powers necessary and expedient, to survey, lay out and construct, a railroad from the city of Camden, to run through the counties of Camden, Gloucester, Salem, Cumberland and Cape May, terminating at or near the city of Cape Island, in the county of Cape May; *provided always*, that it shall be lawful for the said company to make or construct two branch railroads from some convenient point on the said main road, to be determined on by the said company, the one to run to the town of Salem, in the county of Salem, and the other to the town of Bridgeton, in the county of Cumberland, with the privilege of continuing the same

to some point or points on Delaware Bay, not exceeding one hundred feet in width for either branch or main roads, except in such places where from the depth of the excavation, or the height of the embankment it is necessary to take more land for the slope and protection of the side banks of said railroad, in which case so much land as will be necessary for the purpose, and no more, shall be taken, with as many sets of tracks and rails as the company may deem necessary ; and it shall and may be lawful for the said president and directors, their agents, engineers, superintendents, or others in their employ, to enter at all times upon all lands and waters, for the purpose of exploring, surveying, levelling, or laying out the said route or routes of such railroad, or lateral and branch roads, and of locating the same, and to make and erect all necessary works, buildings and appendages thereof, doing no unnecessary injury to private or other property ; and when the route or routes of such road, or lateral and branch roads, shall have been determined upon, and a survey of such route or routes deposited in the office of the secretary of state, then it shall be lawful for the said company, by its officers, agents, engineers, superintendents, contractors, workmen and other persons in their employ, to enter upon, take possession of, hold, have, use, occupy and excavate any such lands, and to erect embankments, bridges and all other works necessary to lay rails, and to do all other things which shall be suitable or necessary for the completion or repair of the said road or roads, subject to such compensation as is hereinafter provided ; *provided always*, that the payment or tender of the payment of all damages for the occupancy of lands through which the said railroad or railroads may be laid out, be made before the said company or any person under their direction or employ, shall enter upon or break ground in the premises, except for the purpose of surveying and laying out said road or roads, unless the consent of the owner or owners of such land be first had and obtained.

7. *And be it enacted,* That when the said company or its agents cannot agree with the owner or owners of such required land or materials for the use or purchase thereof, or when by the legal incapacity or absence of such owner or owners, no such agreement can be made, a particular description of the land or materials so required for the use of said company in the construction of said road, shall be given in writing under the oath or affirmation of some engineer, or proper agent of the company, and also the name or names of the occupant or occupants, if any there be, and of the owner or owners if known, and their residence if the same can be ascertained, to one of the justices of the Supreme Court of this state who shall cause the said company to give notice thereof, to the persons interested if known and in this state, or if unknown and out of this state to make publication thereof as he shall direct for any term not less than ten days, and to assign a particular time and place for the appointment of the commissioners hereinafter named, at which time upon satisfactory evidence to him of the service or publication of such notice aforesaid, he shall appoint under his hand and seal, three disinterested, impartial and judicious freeholders, residents in the county in which the land or materials in controversy lie, or the owners reside, commissioners to examine and appraise the said land or materials, and to assess the damages, upon such notice to be given to the persons interested as shall be directed by the justice making such appointment, to be expressed therein, not less than ten days; and it shall be the duty of said commissioners (having first taken or subscribed an oath or affirmation before some person duly authorized to administer an oath, faithfully and impartially to examine the matter in question and to make a true report, according to the best of their skill and understanding,) to meet at the time and place appointed and to proceed to view and examine the said land or materials, said commissioners at the same time taking into consideration all the

benefit to be derived from, or in consequence of the said railroad or branch roads, as the case may be, to the said owner or owners, and to make a just and equitable estimate or appraisement, of the value of the same : and assessment of damages as shall be paid by the company, for such lands or materials, and damages aforesaid, which report shall be made in writing under the hands and seals of the said commissioners or any two of them, and filed within ten days thereafter, together with the aforesaid description of the land or materials, and the appointment and oath or affirmations aforesaid, in the clerk's office of the county in which the land or materials are situate, to remain of record therein, which report or a copy thereof certified by the clerk of said county, shall at all times be considered as plenary evidence of the right of said company to have, hold, use, occupy, possess and enjoy, the said land or materials, or of the said owner or owners, to recover the amount of said valuation with interest and costs in an action of debt, in any court of competent jurisdiction, in a suit to be instituted against the company, if they shall neglect, or refuse to pay the same for twenty days, after demand made of their treasurer, and shall from time to time constitute a lien upon the property of the company in the nature of a mortgage ; and the said justice of the Supreme Court, shall upon application of either party, and on reasonable notice to the others, tax and allow such costs, fees and expenses to the justice of the Supreme Court, commissioners, clerks, and other persons performing any of the duties prescribed in this section as they, or he shall think equitable and right, which shall be paid by the company ; *provided always*, that should the said company, or the owner or owners of any of the land or materials, feel himself, herself or themselves aggrieved by the decision of the commissioners aforesaid, he, she, or they, may appeal to the next Circuit Court in the county wherein the said lands or materials may lie.

8. *And be it enacted,* That every appeal from the decision of commissioners appointed under the preceding section, shall be made in writing, and in the form of petition to said court, and filed with the Clerk of the said Circuit Court of the county wherein the lands or materials appraised by the said commissioners shall be, and notice in writing of such appeal shall be given to the opposite party, within ten days after the filing thereof, which proceeding shall vest in the Circuit Court, full right and power to hear and adjudge the same, and to direct a proper issue for the trial of said controversy, to be formed between the said parties, and to order a jury to be struck, and a view of the premises to be had, and the said issue to be tried at the next term of said court to be holden in the said county, upon the like notice and in the same manner as other issues in the said court are tried, and it shall be the duty of the said jury to assess the value of the said land or materials and damages sustained, and if they shall find a greater sum than the said commissioners shall have awarded in favor of the said owner or owners, then judgment thereon, with costs, shall be entered against the said company and execution awarded therefor ; but if said jury shall be applied for by the owner or owners, and shall find a less sum than the company shall have offered, or the said commissioners shall have awarded, then said costs to be paid by said applicant or applicants, and either deducted out of the said sum found by the said jury, or execution awarded therefor, as the said court shall direct, but such application shall not prevent the company from taking the said land, upon filing the aforesaid report ; *provided*, that in no case whatever shall said company enter upon, or take possession of any lands, of any person or persons, for the purpose of actually constructing said railroad, or of making any erection or improvements whatever, or otherwise appropriating said lands to the use of said company, until they have paid to the party or parties entitled to receive the

same, the amount assessed by the commissioners as the value of such lands or damages, in case the report of the commissioners is not appealed from, or if the same is appealed from, then the amount which shall be found by the jury by whom the issue shall be tried ; but in case the party or parties entitled to receive the amount assessed by the commissioners, in case there shall be no appeal found by the jury, and in case of appeal shall refuse, upon tender thereof being made to receive the same, or shall be out of this state, or under any legal disability, then the payment of the amount assessed or found as aforesaid, into the Circuit Court of the county where the said lands lie, shall be deemed a valid and legal payment ; and further, that the party or parties entitled to receive the amount assessed by the commissioners may, upon tender thereof being made, receive the same without being barred thereby from his, her, or their appeal from the report of the commissioners.

9. *And be it enacted,* That it shall be the duty of the said company to construct and keep in repair, good and sufficient bridges or passages, over or under the said railroad, where any public road shall intersect and cross the same, so that the passage of carriages, horses and cattle, along the said road, shall not be obstructed, and likewise when the said railroad shall intersect any farm or lands of any individual, to provide and keep in repair suitable wagon ways, over or under the said road.

10. *And be it enacted,* That the said company may purchase, have, and hold real estate, at the commencement and termini of their railroads, and the different branch roads afore-mentioned, and at any intermediate depot upon the line of the same, not exceeding six acres at each place, and may erect and build thereon houses, warehouses, stables, machine shops, and such other buildings and improvements as they may deem expedient for the safety of property and the construction of carriages, and other necessary

uses, and take and receive the rents, profits, and emoluments thereof, and shall have the privilege and authority to erect, build and maintain, over such rivers, creeks, or streams, as the road or branch roads may cross, such piers, bridges, and other facilities, as they may think expedient and necessary for the full enjoyment of all the benefits conferred by this act: Provided said company, whenever it may become necessary to cross any navigable river or creek with their road, shall construct a bridge or bridges, with suitable and sufficient draws, so as not to obstruct the navigation thereof.

11. *And be it enacted,* That the president and directors of the said company, shall declare and make such dividends, as they may deem prudent and proper from time to time out of the nett profits of the said railroad.

12. *And be it enacted,* That the president and directors of said company shall have power, to have constructed, or to purchase with the funds of the company, all machines, engines, wagons, carriages or other vehicles for the transportation of persons, or any species of property on the railroads as they may think fit, reasonable, expedient, or right, *Provided* they shall not charge more than at the rate of three cents per mile, for carrying each passenger on said railway, or at the rate of six cents per ton per mile, for the transportation thereon of every species of merchandize, produce, property and freight.

13. *And be it enacted,* That it shall be lawful for the said company, at any time during the continuance of its charter, to make contracts and engagements, with any other corporation, or with individuals for transporting or conveying any kinds of goods, produce, merchandize, freight or passengers, and to enforce the fulfilment of such contracts.

14. *And be it enacted,* That if any person shall wilfully, impair, injure, destroy or obstruct the use of any railroads enjoyed under

the provisions of this act, or of any of their necessary works, wharves, bridges, carriages or machines, such person or persons so offending, shall forfeit and pay to the said company the sum of fifty dollars, to be by them recovered in any court having competent jurisdiction, in an action of debt, and further, shall be liable for all damages.

15. *And be it enacted*, That when twenty miles or more of said road shall be completed, the said company may commence running cars, for the transportation of passengers and freight, enjoying all the privileges, and subject to the restrictions created by this act.

16. *And be it enacted*, That as soon as the railroad with its appendages shall be finished so as to be used, the president and treasurer of said company, shall file under oath or affirmation a statement of the amount of the costs of said road, including all expenses, and the amount of all purchases made by virtue of this act, in the office of the Secretary of this state, and annually thereafter the president and treasurer of the said company shall under oath or affirmation, make a statement to the Legislature of this state, of the proceeds of said road, until the nett income of the said road shall amount to seven per centum upon the amount of its cost, and as soon as the nett proceeds of said road shall amount to seven per centum upon its cost, the said corporation shall pay to the treasurer of this state, a tax of one-half of one per centum on the cost of said road, to be paid annually thereafter, on the first Monday of January in each year, *provided*; that no other tax, or impost shall be levied, or assessed upon the said company.

17. *And be it enacted*, That the said corporation shall have power to borrow such sum, or sums of money, from time to time, as shall be necessary to build, construct, or repair said road, and furnish the said corporation with all the necessary engines and machinery for the uses and objects of said company, and to secure

the payment thereof by bond, or mortgage, or otherwise on the said road, lands, privileges, franchises and appurtenances of, or belonging to said corporation, at a rate of interest not exceeding seven per centum per annum ; *provided*, that it shall not be lawful for the said company, to plead any statute or statutes of this state, against usury, in any suit in law or equity, instituted to enforce the payment of any bond or mortgage executed under this section.

18. *And be it enacted*, That at any time after the expiration of thirty years from the completion of the said road, the Legislature of this state may cause an appraisement of the said roads, and the appendages thereof, to be made by six persons, three of whom shall be appointed by the chief justice of this state, for the time being, the remaining three by the company, who, or a majority of them, shall report the value thereof to the Legislature, within one year from the time of their appointment, or, if they cannot agree, they shall choose a seventh, who with the aforesaid six, or a majority of them, shall report as aforesaid, or in case the said company shall neglect or refuse to appoint, the said three persons on their part, for two months after notice of the said appointment, by the said chief justice, then the three persons so appointed by him, shall proceed to make such appraisement, which shall be binding on the said company, or in case the six commissioners shall be appointed, and they cannot agree upon the seventh man, then upon two weeks notice to the said company, the said chief justice shall appoint such seventh man as aforesaid, to make such appraisement as aforesaid, and thereupon the state shall have the privilege for three years, of taking the said road, with its appendages, upon the payment to the company of the amount of said report, within one year after electing to take the said road, which report shall be filed in the office of the secretary of this state, and the whole property, and interest of said road, and the appendages thereof, shall be vested in the state of New Jersey, upon the pay-

ment of the amount so reported to the said company, and it shall be the duty of the president of the company, to lay before the Legislature, under oath or affirmation, when they shall so request, a full and fair statement of the costs of said road, and of the receipts and disbursements of the company ; *provided always*, that the aforesaid valuation shall be made without any reference to the receipts or disbursements of the company, or advance of stock, and the said valuation shall in no case exceed the first cost, or valuation of said road, with the appendages thereof.

19. *And be it enacted*, That if the said railroad shall not be commenced within three years and be completed at the expiration of ten years, from the fourth day of July next, ensuing, that then, and in that case this act shall be void.

20. *And be it enacted*, That the Governor, the Chancellor, the Justices of the Supreme Court, and the Judges of the Court of Errors of this state, whilst travelling for the purpose of discharging the duties of their offices, and the members and officers of both houses, of the Legislature of this state, during their annual or other sessions, shall pass and repass on the railroad of said company, in their cars, free of charge.